



E630-01

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Bureau of Export Administration**  
Washington, D.C. 20230

AUG - 3 1998

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nancy Ann Harvey  
4542 Indian Earth Court NE  
Salem, Oregon 97301

Dear Mrs. Harvey:

The Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), hereby charges that, as described in detail below, you, Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) have violated the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).<sup>2</sup>

Facts constituting violations:

Charges 1-2

On or about August 4, 1993, you exported, from the United States to the Republic of South Africa, U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells concealed in a 40-foot container, representing on a bill of lading that the items in the container were "used household goods and personal effects," without obtaining from BXA the validated

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<sup>1</sup> The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629 (August 15, 1997)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).



export license you knew or had reason to know was required by Section 772.1(b) of the former Regulations.

BXA alleges that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order or license issued thereunder, you violated Section 787.6 of the former Regulations. BXA also alleges that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the shipment, you violated Section 787.4(a) of the former Regulations.

### Charge 3

In connection with the shipment described in Charges 1-2 above, you represented on a bill of lading, an export control document as defined in Section 770.2 of the former Regulations, that the container that you were shipping to the Republic of South Africa held "used household goods and personal effects." In fact, the container also held shotguns (with barrel lengths of 18 inches and over) and shotgun shells that you had concealed among the household items. BXA alleges that, by making false or misleading representations of material fact directly or indirectly to a United States government agency in connection with the preparation, submission or use of an export control document, you violated Section 787.5(a) of the former Regulations.

BXA alleges that you committed one violation each of Sections 787.4(a), 787.5(a) and 787.6 of the former Regulations, for a total of three violations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);

Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or

Exclusion from practice before BXA (see Section 764.3(a)(3) of the Regulations).

Copies of relevant Parts of the Regulations are enclosed.

If you fail to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter as provided in Section 766.6 of the Regulations, that failure will be treated as a default under Section 766.7.

You are further notified that you are entitled to an agency hearing on the record as provided by Section 13(c) of the Act and Section 766.6 of the Regulations, if a written demand for one is filed with your answer, to be represented by counsel. and to seek a consent settlement.

Pursuant to an Interagency Agreement between BXA and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations, in connection with the matters set forth in this letter. Accordingly, your answer should be filed with the U.S. Coast Guard ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland 21202-4022, in accordance with the instructions in Section 766.5(a) of the Regulations. In addition, a copy of your answer should be served on BXA at the address set forth in Section 766.5(b), adding "ATTENTION: Mi-Yong Kim, Esq." below the address. Ms. Kim may be contacted by telephone at (202) 482-5311.

Sincerely,



Mark D. Menefee  
Acting Director  
Office of Export Enforcement

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE  
BUREAU OF EXPORT ADMINISTRATION  
WASHINGTON, D.C. 20230

In the Matter of:	)	
	)	
NANCY ANN HARVEY	)	
4542 Indian Earth Court NE	)	Docket No. 98-BXA-08
Salem, Oregon 97305,	)	
	)	
Respondent	)	

RECOMMENDED DECISION AND ORDER

On August 3, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) (Harvey). The charging letter alleged that Harvey committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1998)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979,

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<sup>1</sup> The alleged violations occurred in 1993. The Regulations governing the violations at issue are found in the 1993 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1993)). Those Regulations define the violations that BXA alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to this matter.

as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1998)) (the Act).<sup>2</sup> Specifically, the charging letter alleged that, on or about August 4, 1993, Harvey exported U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells to the Republic of South Africa concealed in a 40-foot container, representing on a bill of lading that the items in the container were "used household goods and personal effects," without obtaining from BXA the validated export license Harvey knew or had reason to know was required by Section 772.1(b) of the former Regulations, in violation of Sections 787.4(a), 787.5(a) and 787.6 of the former Regulations.

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at her last known address. In accordance with that section, on August 3, 1998, BXA sent Harvey, at her address in Oregon, notice that it had issued a charging letter against her.

BXA states that it does not know the exact date of service because BXA has not received the certified receipt from the U.S. Postal Service. However, BXA states that it did receive a letter dated August 23, 1998, from Harvey in which she stated, *inter alia*: "[P]lease find enclosed a copy of Order to Dismiss Complaint ... . Since our divorce in August, 1995,

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<sup>2</sup> The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)), August 13, 1997 (3 C.F.R., 1997 Comp. 306 (1998)) and August 13, 1998 (63 Fed. Reg. 44121 (August 17, 1998)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1998)).

Robert Mahler has harassed me in any possible way he can. I believe this is another attempt of his to cause disruption in my life ... ."

By letter dated October 22, 1998, BXA contacted Harvey and explained that sending a copy of the Order to Dismiss does not constitute an answer under the EAR and that BXA would agree to an extension of time to enable her to respond to the charging letter. On November 4, 1998, BXA orally confirmed that Harvey does not intend to answer the charging letter. Accordingly, BXA alleges that, because Harvey has not answered the charging letter within 30 days from the time she received notice of issuance of the charging letter, as required by and in the manner set forth in Section 766.6 of the Regulations, Harvey is in default.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I therefore find the facts to be as alleged in the charging letter, and hereby determine that Harvey violated Sections 787.4(a), 787.5(a) and 787.6 of the former Regulations.

Section 764.3 of the Regulations establishes the sanctions available to BXA for the violations charged in this default proceeding. The applicable sanctions as set forth in the Regulations are a civil monetary penalty, denial of export privileges, and/or suspension from practice before BXA. *See* 15 C.F.R. § 764.3 (1998).

BXA urges that I recommend to the Under Secretary for Export Administration<sup>3</sup> that all of Harvey's export privileges be denied for three years, for the following reasons. First, BXA asserts that Harvey violated Sections 787.4(a), 787.5(a) and 787.6 of the former Regulations by concealing U.S.-origin shotguns and shotgun shells in a 40-foot container and representing on the bill of lading that the items in the container were "used household goods and personal effects," and then shipping the container to the Republic of South Africa. BXA's evidence indicates that at the time of the export, the shotguns and shotgun shells were classified on the Commerce Department's Commerce Control List under ECCN 0A84C and required a validated license for export to the Republic of South Africa, which Harvey did not obtain.

Second, BXA claims that Harvey has indicated that she does not intend to resolve this matter, either through the hearing process or through settlement, or that she would pay a civil penalty if one were imposed. Under these circumstances, BXA believes that denial of all Harvey's export privileges is the appropriate sanction.

Finally, BXA argues that, given the fact that Harvey is charged with three violations in connection with the shipment of shotguns and shotgun shells to the Republic of South Africa, a three-year export denial is warranted. BXA believes that a three-year denial period would be appropriate in lieu of a civil monetary penalty in light of the role she played with respect to the shipment.

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<sup>3</sup> Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases the Administrative Law Judge issues a recommended decision which is reviewed by the Under Secretary for Export Administration, who issues the final decision for the agency.

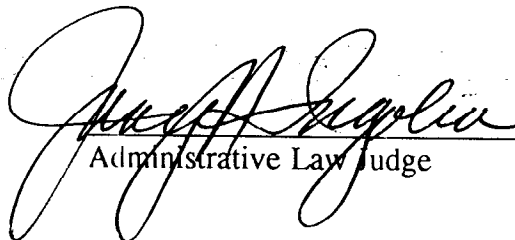
Given the foregoing, I concur with BXA and recommend that the Under Secretary for Export Administration enter an Order against Harvey denying her export privileges for a period of three years.<sup>4</sup>

Accordingly, I am referring my Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written Order affirming, modifying or vacating the Recommended Decision and Order. *See* 15 C.F.R. § 766.22(c) (1998).

Dated: \_\_\_\_\_

6/21/99

  
Administrative Law Judge

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<sup>4</sup> Denial orders can be either "standard" or "non-standard." A standard order denying export privileges is appropriate in this case. The terms of a standard denial order are set forth in Supplement No. 1 to Part 764 of the Regulations.



UNITED STATES DEPARTMENT OF COMMERCE  
 UNDER SECRETARY FOR EXPORT ADMINISTRATION  
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NANCY ANN HARVEY	)	
4542 Indian Earth Court NE	)	Docket No. 98-BXA-08
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DECISION AND ORDER

On August 3, 1998, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (BXA), issued a charging letter initiating an administrative proceeding against Nancy Ann Harvey (formerly known as Nancy Ann Mahler (nee Reamer)) (Harvey). The charging letter alleged that Harvey committed three violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1999)) (the Regulations),<sup>1</sup> issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1999)) (the Act).<sup>2</sup>

Specifically, the charging letter alleged that, on or about August 4, 1993, Harvey exported U.S.-origin shotguns (with barrel lengths of 18 inches and over) and shotgun shells to

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the Republic of South Africa, concealing them in a 40 foot container and representing on a bill of lading that the items in the container were "used household goods and personal effects," without obtaining from BXA the validated export license Harvey knew or had reason to know was required by Section 772.1(b) of the former Regulations. BXA alleged that, by exporting U.S.-origin commodities to any person or to any destination in violation of or contrary to the provisions of the Act or any regulation, order or license issued thereunder, Harvey violated Section 787.6 of the former Regulations. BXA also alleged that, by selling, transferring, or forwarding commodities exported or to be exported from the United States with knowledge or reason to know that a violation of the Act, or any regulation, order or license issued thereunder occurred, was about to occur, or was intended to occur with respect to the shipment, Harvey violated Section 787.4(a) of the former Regulations.

Further, the charging letter alleged that, in connection with the August 4, 1993 transaction, Harvey represented on a bill of lading, an export control document as defined in Section 770.2 of the former Regulations, that the container that she was shipping to the Republic of South Africa held "used household goods and personal effects." In fact, the container also held shotguns (with barrel lengths of 18 inches and over) and shotgun shells that she had concealed among the household items. BXA alleged that, by making false or misleading representations of material fact directly or indirectly to a United States government agency in connection with the preparation, submission or use of an export control document, Harvey violated Section 787.5(a) of the former Regulations.

BXA presented evidence that Harvey received the charging letter but failed to answer the charging letter, as required by Section 766.7 of the Regulations, and is therefore in default.

Thus, pursuant to Section 766.7 of the Regulations, BXA moved that the Administrative Law Judge (hereinafter the ALJ) find the facts to be alleged in the charging letter and render a Recommended Decision and Order.

Following BXA's motion, the ALJ issued a Recommended Decision and Order in which he found the facts to be as alleged in the charging letter, and concluded that those facts constituted three violations of the former Regulations by Harvey, as BXA alleged. The ALJ also agreed with BXA's recommendation that the appropriate penalty to be imposed for those violations is a denial, for a period of three years, of all of Harvey's export privileges. As provided by Section 766.22 of the Regulations, the Recommended Decision and Order has been referred to me for final action.

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the Recommended Decision and Order of the ALJ.

**ACCORDINGLY, IT IS THEREFORE ORDERED,**

FIRST, that, for a period of three years from the date of this Order, Nancy Ann Harvey, 4542 Indian Earth Court NE, Salem, Oregon, 97305, may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

- A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

- D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provision of this Order.

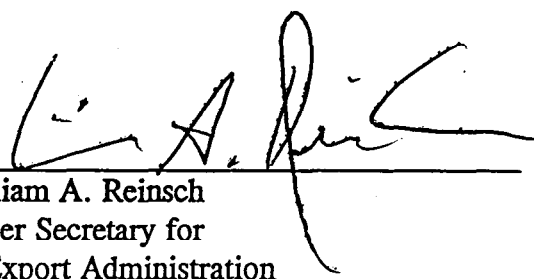
FOURTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

FIFTH, that this Order shall be served on Harvey and on BXA, and shall be published in the *Federal Register*.

This Order, which constitutes the final agency action in this matter, is effectively immediately.

Dated: \_\_\_\_\_

July 12, 1999

  
\_\_\_\_\_  
William A. Reinsch  
Under Secretary for  
Export Administration